

effort on the part of the undersigned to place the claims of the application in condition for allowance without raising new issues and without requiring additional searching by the Examiner. Reexamination and reconsideration of the application, and allowance of the claims, is respectfully requested.

In the Final Office Action of May 22, 2002 in the above-identified U.S. patent application, the Examiner has made the withdrawal of claims 24-26 from consideration final. These claims have now been cancelled. As was the case with previously cancelled claims 16-23, applicant reserves the right to file one or more divisional patent applications directed to these claims.

The Examiner's objection to the Amendment filed March 12, 2002, as introducing new matter into the specification, is noted. It is requested that the Examiner reconsider this objection in view of the following. It is believed to be well understood in the art, as evidenced by the accompanying materials, which will be discussed in detail below, that in the absence of any mention of a perforation procedure to increase the permeability of a wrapper and to thus provide a net permeability value, that the term permeability means and is understood to indicate inherent permeability.

The accompanying Declaration Under 37 CFR 1.132 of Paul David Case is accompanied by Tables 1-5 taken from a report produced by Mr. Case on 29 September 1997 concerning the performance of cigarette papers incorporating various permeability controls. Tables 1-5 detail various experimental data carried out on cigarettes made using different papers. The specific data produced during this

experimentation has been removed from the relevant parts of the Tables as this information is confidential. The results of the permeability investigations carried out on the supplied papers has been retained in Tables 1-3 to show the total permeability of the paper, and its resemblance to the figure supplied in the paper code denoting the permeability value provided as a result of the electrostatic perforation. Tables 1-5 provide evidence that the paper codes provided by the paper supplier specifying given paper specifications expressly include the reference "EP" to denote that the paper has been electrostatically perforated. No such reference is included in the paper codes that simply relate to natural, inherent permeability to denote that the permeability relates to the inherent permeability. These further provide that papers having additional EP or LP resultantly have much higher net permeability.

A document produced by Rothmans International Tobacco Limited relating to the chemistry of mainstream and sidestream smoke produced by cigarettes with special low sidestream cigarette papers, and dated February 1992, is also being submitted.

Provided is the front sheet of this document to show the date it was circulated and its source. Also included is Table 2 which show cigarette paper references of the supplier (Papeteries de Mauduit) and the corresponding permeability of the paper. Papers that have been additionally perforated by electrostatic means have been clearly stated in the cigarette paper reference and the permeability value for each paper. There is no express statement for the papers that have not been perforated to indicate that they have not been perforated or that the permeability relates to the inherent permeability of

these papers. Other data relating to these papers has been removed to maintain confidentiality. Figures 5-8 include similar references in the comparison of various parameters for perforated and non-perforated papers. It is apparent that paper suppliers use standard terminology in relation to paper specifications, and the above documents are therefore not specific to any particular tobacco company.

Three paper specification sheets (3) provided by a paper supplier, including a supplier reference that again exemplifies the addition of "EP" into the paper references that have been electrostatically perforated is also enclosed. It is understood that the permeability of the papers specified by paper references having no such indication relates to the natural, inherent permeability. Corresponding perforated and non-perforated papers have been highlighted in matching colors for ease of reference.

A Table dated September 1990 taken from a document produced for Rothmans by paper supplier Papeteries de Mauduit (pdm) on cigarette papers that refers simply to porosity to indicate a paper having inherent porosity is being provided. The Table details sidestream samples and highlights basic and final porosities of various papers, the Grade (code) of the papers indicating whether it has been electrostatically perforated. Only those papers that have been additionally perforated by electrostatic means have a final porosity in addition to a basic value of porosity. Again, this shows that use of such paper references was commonly used prior to the priority date of the present application and across the tobacco industry.

It is believed that these above materials provide support for the assertion that references to the permeability of a wrapper relate to the inherent or natural permeability of the wrapper unless it is specifically stated otherwise. It is thus believed that the addition of the term "inherent" to the specification and to claim 9 of the subject patent application does not constitute matter.

Claims 9-15 were rejected under 35 U.S.C. 112, first paragraph as containing subject matter not properly described in the specification. It is believed that the amendments to the specification, to add the term "inherent" do not constitute new matter, for the reasons described above. Since those amendments are believed not to constitute new matter the rejection of claims 9-15 under 35 U.S.C. 112, first paragraph is respectfully requested.

Claims 9, 12, 15 and 27-30 were rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. patent No. 3,805,803 to Hedge in view of U.S. patent No. 5,109,876 to Hayden. Claims 10, 11, 13 and 14 were rejected under 35 U.S.C. 103(a) over Hedge in view of Hayden and further in view of U.S. patent No. 5,261,425 to Raker.

Initially, it is noted that claims 12-15 have now been cancelled. Their rejections are thus now rendered moot by that cancellation.

In the rejection of claim 9, the Examiner indicated that Hedge describes a tobacco rod comprising a blend of shredded tobacco and reconstituted tobacco in his Example 2. The reconstituted tobacco can be in the form of a sheet, as recited in his

Example 1. The Examiner further asserted that Hayden recites various wrapper porosities and that it would have been obvious to wrap Hedge's tobacco rod in a wrapper as taught by Hayden.

The Hedge patent, as discussed previously, discloses several distinct smoking rod constructions. In two of these; i.e. Examples 1 and 3, the tobacco rod is formed from sheets of reconstituted tobacco after they have been formed. In Example 2, ground tobacco is extruded under high pressure to form coherent filaments similar to cut tobacco. These coherent filaments are mixed with flue-cured tobacco. The Examiner has asserted that it would be obvious to provide a tobacco rod of shredded tobacco and reconstituted tobacco. While Hedge teaches a tobacco rod of flue-cured tobacco and reconstituted tobacco in the form of coherent filaments, Hedge does not teach or suggest a tobacco rod formed of shredded tobacco and shredded reconstituted tobacco sheet. There is no teaching or suggestion in Hedge that the reconstituted sheets recited in Examples 1 and 3 are the equivalent of, or could be substituted for the coherent filaments recited in Example 2. The Examiner's assertion of their substitutability is not supported by any teaching in the reference and is based on hindsight.

Claim 9 has been amended a second time to add the language of claim 15 and to also recite the reduction in sidestream smoke which is afforded by the smoking article in accordance with the present invention. Hedge describes the use of activated carbon in his several smoking materials. However the carbon is used to reduce total

particulate matter in the smoke, and to reduce total nicotine alkaloids. There is no teaching or suggestion in Hedge that the use of activated carbon particles in the shredded reconstituted tobacco sheet will provide a reduced aldehyde content in the mainstream smoke, and reduced sidestream smoke, as recited in amended claim 9.

The teachings of amended claim 9, which are missing from the Hedge reference, are not provided by the Hayden reference. The wrapping materials described in Hayden have an inherent porosity of less than 400 CORESTA units and sometimes may be below 50 CORESTA units. Hayden also recites that the wrapping materials can be electrostatically perforated if the wrapping material has a low inherent porosity. As recited at Column 1, lines 57-64 of Hayden, the cigarettes yield an ash with certain characteristics and which burn in a uniform manner. Further, they do not provide an off-taste or an off-aroma to the mainstream and sidestream smoke. Hayden does not teach, or suggest that the use of a wrapper with an inherent permeability of as low as 50 CORESTA, in combination in Hedge, would result in a smoking article structured as set forth in twice amended claim 9 and having the reduction in mainstream aldehyde content, and the reduction in sidestream smoke, also as recited in twice amended claim 9. It is thus submitted that twice amended claim 9 is patentable over Hedge taken in combination with Hayden.

Claims 27-30 are believed also to be patentable over Hedge in view of Hayden since they depend from believed allowable twice amended claim 9. These claims recite specific inherent permeability values for the wrapper. While several of these fall within

the range disclosed by Hayden, there is no teaching or suggestion in either Hayden or Hedge of the reduction of aldehyde levels in the mainstream smoke, and the reduction of sidestream smoke in the tobacco rod recited in twice amended claim 9. Thus claims 27-30 are also believed to be patentable.

Claims 10 and 11 depend from believed allowable twice amended claim 9. They recite that the activated carbon particles are of vegetable origin and specifically originate from coconut. The secondary reference to Raker teaches a cigarette including a roll of tobacco cut filler, and two layers of paper wrapping materials. These two layers of wrapping material are identified as an inner wrapping material 25, and an outer wrapping material 27. The inner wrapping material 27 is recited, at Column 12, as being provided with carbonaceous material that may include coconut hulls. This carbonaceous material is disclosed in Raker as being part of the inner wrapper, not as part of the tobacco rod. While Hedge teaches the use of activated carbon in the reconstituted tobacco, there is no teaching that the carbonaceous material incorporated in the inner wrapper of Raker would be useable in the shredded reconstituted tobacco sheet, as recited in claim 9 of the subject application. Accordingly, claims 10 and 11 are also believed to be allowable.

The various other references of record in the subject application have again been reviewed. Since they were not relied on in the rejection of the claims, no further discussion thereof is believed to be warranted.

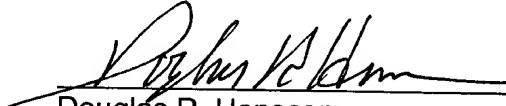
SUMMARY

Claim 9 has been amended a second time, claims 12-15 and 24-26 have been cancelled; and claims 10, 11 and 27-30 have been carried forward. It is believed that the claims now pending in the subject patent application are allowable over the prior art references cited and relied on by the Examiner, taken either singly or in combination. It is further believed that this Amendment After Final Rejection places the application in condition for allowance, without raising new issues and without requiring the Examiner to conduct additional searching. Allowance of the claims, and passage of the application to issue is respectfully requested.

Respectfully submitted,

John Roger SAMPSON
Applicant

JONES, TULLAR & COOPER, P.C.
Attorneys for Applicant


Douglas R. Hanscom
Reg. No. 26, 600

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JONES, TULLAR & COOPER, P.C.
P.O. Box 2266 Eads Station
Arlington, Virginia 22202
(703) 415-1500
Attorney Docket: SAMP-US1



MARKED-UP COPY OF AMENDED CLAIM 9

SAMPSON - 09/582,232

9. (Twice Amended) A smoking article comprising:

[a tobacco rod, said tobacco rod having a blend of] shredded tobacco

[and];

shredded reconstituted tobacco sheet, said reconstituted tobacco sheet containing 30% activated carbon particles of a mean particle size of 37 μ m, said shredded tobacco and said shredded reconstituted tobacco sheet being blended together; [and]

a tobacco rod formed from said blended shredded tobacco and said shredded reconstituted tobacco sheet; and

a wrapper [around said tobacco rod], said wrapper having an inherent permeability of at least 20 CORESTA, said wrapper being placed around said tobacco rod to form said smoking article, said smoking article having mainstream smoke with a reduced aldehyde content and having a reduction in sidestream smoke when said smoking article is smoked.

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